

§ 802.30

16 CFR Ch. I (1–1–03 Edition)

(a) If the number of voting securities to be acquired pursuant to the offer is increased such that a greater notification threshold would be met or exceeded, only the acquiring person need again file notification, but a new waiting period must be observed;

(b) If a noncash tender offer is amended to become a cash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by § 803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is earlier; or

(c) If a cash tender offer is amended to become a noncash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by § 803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (as determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is later.

Examples: 1. Assume that corporation A makes a tender offer for 20 percent of the voting securities of corporation B and that “A” files notification. Under this section, if A subsequently amends its tender offer only as to the amount of consideration offered, the waiting period so commenced is not affected, and no new notification need be filed.

2. In the previous example, assume that A makes an amended tender offer for 27 percent of the voting securities of B, valued at greater than \$1 billion. Since a new notification threshold will be crossed, this section requires that “A” must again file notification and observe a new waiting period. Paragraph (a) of this section, however, provides that “B” need not file notification again.

3. Assume that “A” makes a tender offer for shares of corporation B. “A” includes its voting securities as part of the consideration. “A” files notification. Five days later, “A” changes its tender offer to a cash tender offer, and on the same day files copies of its amended tender offer with the offices designated in § 803.10(c). Under paragraph (b) of this section, the waiting period expires (unless extended or terminated) 15 days after the receipt of the amended offer (on the 20th

day after filing notification), since that occurs earlier than the expiration of the original waiting period (which would occur on the 30th day after filing).

4. Assume that “A” makes a cash tender offer for shares of corporation B and files notification. Six days later, “A” amends the tender offer and adds voting securities as consideration, and on the same day files copies of the amended tender offer with the offices designated in § 803.10(c). Under paragraph (c) of this section, the waiting period expires (unless extended or terminated) on the 30th day following the date of filing of notification (determined under § 803.10(c)), since that occurs later than the 15th day after receipt of the amended tender offer (which would occur on the 21st day).

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§ 802.30 Intraperson transactions.

An acquisition (other than the formation of a joint venture or other corporation the voting securities of which will be held by two or more persons) in which, by reason of holdings of voting securities, the acquiring and acquired persons are (or as a result of formation of a wholly owned entity will be) the same person, shall be exempt from the requirements of the act.

Examples: 1. Corporation A merges its two wholly owned subsidiaries S1 and S2. The transaction is exempt under this section.

2. Corporation B creates a new wholly owned subsidiary. The transaction is exempt under this section.

3. Corporation A, which controls corporation B by a contract giving A the power to name a majority of B’s directors, but which holds no voting securities of B, proposes to acquire 15 percent of B’s voting securities. The transaction is not exempt under this section, since “A” and “B” are not the same person “by reason of holdings of voting securities.”

4. Corporation A repurchases a portion of its voting securities in a series of transactions involving numerous sellers. All of these acquisitions are exempt under this section. The redemption or retirement of securities would likewise be exempt under this section.

5. Corporations A and B (which are not included within the same person) form a new corporation, C. A and B will each hold C’s voting securities upon formation. This section is inapplicable, and the acquisitions of C’s voting securities by A and B are not exempt.